

Bellia v. Workers Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2018 BCSC 1975
Result	Petition Dismissed
Judge	Mr. Justice Macintosh
Date of Judgment	September 21, 2018, amended March 7, 2019
WCAT Decision(s) Reviewed	WCAT-2012-03343

Keywords

Judicial review – Procedural Fairness – Proceeding by way of written submissions instead of oral hearing – Compensable Consequences (policy item #22.00) – Discretionary decision not to retain the advice of an independent health professional, and not to obtain further written evidence from a medical specialist – Policy item #97.00

Summary

The worker was a paramedic. The Workers' Compensation Board (the "Board") accepted the worker's claim for right shoulder strain and right sided neck strain. This injury occurred when she was attempting to lift a patient in 2008.

Subsequently, the worker sought acceptance of thoracic outlet syndrome (TOS) and chronic regional pain syndrome (CRPS), as compensable consequences of her initial injury.

The Board denied the worker's claim and the Review Division upheld the Board's decision.

Before the Review Division, the worker had relied on an opinion from her specialist, Dr. Nelems (thoracic surgeon). Dr. Nelems opined that the worker had CRPS and TOS, and that these conditions were caused by her 2008 work injury. The Review Division did not find Dr. Nelems' opinion on causation to be persuasive.

The worker appealed to the Workers' Compensation Appeal Tribunal (WCAT). The worker asked that her appeal be heard by way of oral hearing. She and her representative stated that her appeal involved "complex medical issues", and that Dr. Nelems was willing to attend to give oral evidence.

WCAT determined on a preliminary basis that the appeal would proceed by way of written submissions. WCAT invited the worker and her representative to support their

request for an oral hearing with “specific, detailed reasons, with reference to the criteria in item 7.5 of WCAT’s Manual of Rules of Practice and Procedure (MRPP)” if they continued to believe that an oral hearing was required.

The worker and her representative did not support their request with specific, detailed reasons. Instead, they continued to merely assert the appeal involved “complex medical issues” and that WCAT should hear from Dr. Nelems.

WCAT heard the appeal by way of written submissions, not by way of oral hearing.

WCAT weighed the medical evidence before it. It essentially concluded that, even if it accepted that the worker had CRPS and TOS, the medical opinions were insufficiently persuasive that the worker’s right shoulder strain and right-sided neck strain were a significant cause of the CRPS and TOS. In other words, WCAT essentially concluded that the medical opinions were insufficiently persuasive on the work causation question. WCAT denied the worker’s appeal.

Reasons of BC Supreme Court

The court held that WCAT had not been procedurally unfair when it proceeded by way of written submissions, instead of by way of oral hearing. The court noted that:

- The *Workers Compensation Act*, [RSBC 1996], c. 492 expressly grants WCAT the discretion to conduct an appeal in writing or orally (or by other means);
- The rule in WCAT’s MRPP provides that WCAT will normally conduct an appeal by written submissions where the issues are largely medical and credibility is not at issue (item 7.5);
- The petitioner did not assert that credibility was in issue, but simply asserted that the appeal involved a “complex medical issue”;
- The witness that the petitioner sought to produce at an oral hearing (Dr. Nelems) was her own specialist, and thus her own witness, from whom additional evidence could be solicited in written form;
- During the submissions process, WCAT advised the petitioner that, pursuant to its MRPP, written reports prepared by an expert are admissible without the need for the expert to attend an oral hearing;
- The petitioner had notice that WCAT may not find Dr. Nelems’ opinion on work causation to be persuasive because the review officer, in the decision that she appealed to WCAT, was not persuaded by Dr. Nelems’ opinion;
- During the submissions process, WCAT expressly invited the petitioner’s representative to submit to WCAT any new evidence that he sought to rely upon;

- The petitioner and her representative did not avail themselves of this opportunity;
- The petitioner did not support her oral hearing request with “specific, detailed reasons ... with reference to the criteria in item 7.5 of WCAT’s MRPP”, despite WCAT’s request to do so.

The court concluded that WCAT’s decision to hear the appeal by way of written submissions was in accordance with the rule in its own MRPP.

Ms. Mack was not prevented from adducing any evidence in support of her case. She chose not to adduce a further written opinion from Dr. Nelems. That does not render WCAT’s procedure to be unfair. A process is not unfair simply because it is not the most thorough process.

With respect to the merits of WCAT’s decision, the court said that there was a rational basis for the result in WCAT’s decision, which was essentially that the medical opinions were insufficiently persuasive on the work causation question. The decision was therefore not patently unreasonable.

The court also accepted that WCAT’s discretionary decisions not to retain an independent health professional, and not to obtain further written evidence from Dr. Nelems, were not patently unreasonable within the meaning of section 58(3) of the *Administrative Tribunals Act*, [SBC 2004] c. 45. The panel had not based these discretionary decisions entirely or predominantly on irrelevant factors.

Finally, the court accepted that even if Board policy 97.00 applied to WCAT, then any obligation to seek further evidence from Dr. Nelems or the other doctors was not triggered because the panel did not find that the evidence before it was not “sufficiently complete and reliable” to enable arriving at a conclusion. Therefore, even if policy 97.00 applies to WCAT, it does not render WCAT’s decision to be patently unreasonable.